IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1116 of 1983
With
FIRST APPEAL No. 1117 of 1983
With
CROSS OBJECTION No. 40 of 2007
In
FIRST APPEAL No. 1117 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUMATI WD/O RATILAL K AGRAVAL & 5 - Appellant(s)
Versus
UDHAJI JIJIJI JADEJA & 2 - Defendant(s)

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Appearance :
MR GIRISH D BHATT for Appellants
MR ARUN H MEHTA for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/07/2007

COMMON ORAL JUDGMENT

Shri G.D. Bhatt, learned counsel for the appellants; Shri Arun H.Mehta, learned counsel for the respondents.

2. The claimants, being aggrieved by the award dated 16.6.82 passed by the Motor Accident Claims Tribunal [No.3] at Ahmedabad in M.A.C. Application No. 212/80 and M.A.C. Application No.213/80, have filed First Appeal No. 1116/83 and First Appeal No. 1117/83. The Insurance Company has also filed Cross Objections No. 40/07 in First Appeal NO. 1117/83, with a submission that the Tribunal was unjustified in holding the owner and driver of the motor car 100% negligent while in fact, present is a case of contributory negligence.

3. From the facts of the case, it would appear that Dilipkumar Ratilal Agrawal, a pillion rider had been examined as a witness who had stated before the Court that the car driver was rash and negligent, in support of his submission, there are other circumstances available on the records. The Insurance Company, even otherwise, would not be entitled to raise the question of contributory negligence, because, the said defence would not be available to the Insurance Company either under Section 95 or Section 96 of the Motor Vehicles Act. The findings recorded by the learned Tribunal that the car driver was rash and negligent have not been challenged by the driver or owner of the car, therefore also, the said findings cannot be challenged by either

party when the driver himself does not come forward and say that he was not negligent. The Cross Objections on this short ground deserve to and are accordingly rejected.

4. The dependants of the deceased Ratilal, though tried to submit before the Court that the deceased was earning handsome amount and the family was entitled to larger claim but from the evidence, it would appear that almost about ten hours were spent by the deceased on his grocery shop which was leaving no time with him to attend to the work of commission agency or building houses. The Tribunal was justified in assessing the income at Rs. 10,000/- and dependency at Rs. 8,000/-. Multiplier of 14 cannot be said to be on the lower side. Other amounts offered to the present appellant also appear to be reasonable. I find no reason to interfere in the First Appeal No. 1116/83, the said appeal is dismissed.

5. In case of Dilikumar, it has come on the record that he had suffered injury to tibia and fibula and other parts of the body. The Tribunal has taken into consideration the functional disability, loss of future income, expectation and enjoyment of the life and has rightly awarded a sum of Rs. 57,500/-. It will have to be noted that the accident had taken place on 28.5.80 and the amount was awarded on 16.6.82. The inflation which has put hike to the prices cannot be taken into consideration nor this

Court would be justified in awarding the amount taking into consideration the today's Index number and the prices.

6. I find no reason to interfere. The First Appeal No. 1117/83 is also dismissed.
7. Both the appeals and Cross Objections are dismissed. No costs.

[R.S. GARG, J.]

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